

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DERRICK PEOPLES

Claimant

APPEAL NO. 19A-UI-07907-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 07/07/19

Claimant: Appellant (5/R)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Derrick Peoples filed a timely appeal from the October 7, 2019, reference 04, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Peoples voluntarily quit on September 18, 2019 by failing to report for work for three days in a row without notifying the employer. After due notice was issued, a hearing was held on October 30, 2019. Mr. Peoples initially participated, but terminated his participating in the hearing prior to the end of the hearing. Mail Lor represented the employer and presented additional testimony through Alexis Greenslade. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and the August 8, 2019, reference 02, decision. The administrative law judge took official notice of the clerk of court records available at www.iowacourts.state.ia.us in reference to Mr. People's incarceration dates in mid-July 2019. The parties waived formal notice on the issues of whether the claimant had refused an offer of suitable work without good cause, whether the claimant separated from the employment due to incarceration, and whether the claimant was able and available for work.

ISSUE:

Whether the claimant refused an offer of suitable work without good cause on or about September 18, 2019.

Whether the claimant voluntarily quit without good cause on or about September 18, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: QPS Employment Group, Inc. is a temporary employment agency. Derrick Peoples has performed work for QPS in multiple temporary work assignments in the Des Moines metropolitan area. This appeal and decision concerns a separation alleged to have occurred on or about September 18, 2019.

On September 11, 2019, QPS offered Mr. Peoples as full-time, temporary forklift operator assignment at MacArthur Company. Mr. Peoples accepted the assignment. The work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. The wage was \$14.00 per hour. That translates to \$560.00 per week for a 40-hour work week. The assignment was to start on September 16. Mr. Peoples did not report for the assignment and did not give notice to the employer that he would be absent from the assignment. When Mr. Peoples did not appear for the assignment, the employer attempted to reach Mr. Peoples by telephone, but had to leave a voicemail message. There was no further contact between the parties until September 24, 2019.

Mr. Peoples established an original claim for unemployment insurance benefits that was effective July 7, 2019. Iowa Workforce Development set Mr. Peoples' weekly benefit amount at \$298.00. Mr. Peoples made weekly claims for 13 consecutive weeks between July 7, 2019 and October 5, 2019. Mr. Peoples received full weekly benefits for each of the 12 weeks between July 7, 2019 and September 28, 2019.

The relevant job offer on September 11, 2019 fell within the 10th week of Mr. Peoples' unemployment insurance claim. The September 18, 2019 assignment start date fell within the 11th week of Mr. Peoples' claim. Mr. Peoples' average weekly wage during his highest earning base period quarter was \$528.87. Seventy-five percent of that average wage would be \$396.65.

Mr. Peoples did not receive benefits for the week that ended October 5, 2019. Mr. Peoples filed an additional claim that was effective October 20, 2019 and filed a claim for the week that ended October 26, 2019. Mr. Peoples did not receive benefits for that week. In each weekly claim report, Mr. Peoples has reported that he is able to work, that he is available for work, that he has not refused any offers of employment, and that he has no wages to report. Mr. Peoples did not report the wages QPS paid him for July 8 and for July 15-26, 2019. QPS is a base period employer for purposes of the claim, but was relieved of liability for benefits in connection with the August 8, 2019 adjudication of the March 2019 separation.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Iowa Code section 96.5(3)(a) provides as follows:

Causes for disqualification.

An individual shall be disqualified for benefits:

3. *Failure to accept work.* If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Regardless of whether one calls Mr. Peoples' failure to report for the MacArthur Company assignment a voluntary quit or a refusal of suitable work, Mr. Peoples' conduct in connection with the matter disqualifies him for unemployment insurance benefits. The MacArthur Company assignment was suitable work in all respects. Mr. Peoples' failure to appear to start the assignment after accepting the assignment constituted a refusal of suitable work without good cause. The effective September 18, 2019 refusal disqualifies Mr. Peoples for unemployment insurance benefits. If one views this as a voluntary quit from QPS through Mr. Peoples' failure to appear for shifts on and after September 18, 2019, that also disqualifies Ms. Peoples for benefits. Effective September 18 2019, Mr. Peoples is disqualified for benefits until he has

worked in and been paid wages equal to 10 times his weekly benefit amount. Mr. Peoples must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The October 7, 2019, reference 04, decision is modified as follows. The claimant refused an offer of suitable employment on September 18, 2019 without good cause. In the alternative, the claimant voluntarily quit on September 18, 2019 without good cause attributable to the employer.

This matter is remanded to the Benefits Bureau for adjudication of the several additional potentially disqualifying events the employer mentioned in its testimony. Those include: A voluntary quit alleged to have occurred on July 2, 2019, a voluntary quit alleged to have occurred on July 8, 2019, a voluntary quit alleged to have occurred on July 26, 2019, a work refusal alleged to have occurred on October 9, 2019, a work refusal alleged to have occurred on October 21, 2019. The Benefits Bureau should also investigate and adjudicate the claimant's availability for work for the period of July 7, 2019 through September 14, 2019. The Benefits Bureau should also investigate and adjudicate whether the claimant failed to report wages from the QPS employment and other employers during that same period.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn